

**OFFICE OF THE SECRETARY OF STATE
STATE OF MISSISSIPPI
BUSINESS REGULATION AND ENFORCEMENT DIVISION**

In The Matter Of:

PHILLIP MINGA

RESPONDENT.

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**Administrative Hearing
Number: S-03-0180**

**SUMMARY CEASE AND DESIST ORDER
AND NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE PENALTY**

I. Jurisdiction

The Business Regulation and Enforcement Division of the Office of the Secretary of State (hereinafter "Division"), having the authority to administer and to provide for the enforcement of all provisions for the Mississippi Securities Act, Miss. Code Ann. §§75-71-101 to 75-71-735 (hereinafter "Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offer and sale of securities within the State of Mississippi, has determined the following.

II. Findings of Fact

1. Phillip Minga is a natural person and a resident of Mississippi. Minga's last known address is 906 Rose Lane, Amory, Mississippi 38821-2111. A diligent search of the records of the Division reveals that Minga was not registered to sell securities in the State of Mississippi at any time prior to the issuance of this order. The Diligent Records Search is affixed hereto as Exhibit "A."

2. On May 30, 1997, the Division issued a **SUMMARY CEASE AND DESIST ORDER AND ORDER IMPOSING ADMINISTRATIVE PENALTY** (hereinafter "Summary Order") against Minga for selling securities in the form of promissory notes to residents of the State of Mississippi. The Summary Order indicates that the promissory notes were neither registered with the Division, nor granted an exemption by the Division. The Summary Order further reveals that Minga was not registered to sell securities in the State of Mississippi. The Summary Order is affixed hereto as Exhibit "B."
3. Subsequent to Minga's receipt of the Summary Order, Minga failed to request a hearing, the thirty (30) day time period in which to request a hearing having expired.
4. Because Minga failed to request a hearing, the Division issued a **FINAL CEASE AND DESIST ORDER AND FINAL ORDER IMPOSING ADMINISTRATIVE PENALTY** (hereinafter "Final Order"). The Final Order states the following conclusions of law:
 1. The promissory notes offered and sold by the Respondent are securities as that term is defined in §75-71-105(l) of the Act.
 2. These securities are not eligible for exemption from registration under the Act.
 3. Respondent sold these securities in the State of Mississippi as defined in §75-71-119 of the Act.
 4. Respondent sold unregistered securities in violation of §75-71-401 of the Act.
 5. Respondent acted as an agent for the purpose of selling the securities of an issuer . . . and was not registered to do so in Mississippi, thereby violating §75-71-301 of the Act.

In addition to the conclusions above and in satisfaction thereof, the Final Order (1) imposes an Administrative Penalty upon Minga in the amount of

Eleven Thousand Five Hundred Fifty Dollars (\$11,550.00), which was to be paid within thirty (30) days of receipt of the Final Order; and (2) orders Minga to immediately cease and desist from any further activity in, or originating from, the State of Mississippi in connection with the offer and/or sale of securities to any person without the securities being duly registered or exempted from registration of the Act. The Final Order advises that a willful violation of said Final Order may be punishable upon conviction by a fine of not more than Twenty-Five Thousand Dollars (\$25,000.00) or five (5) years imprisonment, or both, in addition to civil and administrative remedies available to the Division. The Final Order is affixed hereto as Exhibit "C."

5. On August 17, 1998, Minga filed a Notice of Appeal with the First Judicial District of Hinds County, Mississippi, requesting that the Final Order be modified or set aside in whole or in part. A copy of the Notice of Appeal is affixed hereto as Exhibit "D."
6. On September 16, 1998, the Division filed an Answer to the Notice of Appeal with the First Judicial District of Hinds County, Mississippi, containing a certified copy of the filing and evidence upon which the order was entered pursuant to Section 75-71-601 of the Act. A copy of the Answer to Notice of Appeal is affixed hereto as Exhibit "E."
7. On January 31, 2001, the Chancellor for the First Judicial District of Hinds County dismissed Minga's appeal. A copy of the Order of Dismissal Without Prejudice is affixed hereto as Exhibit "F."

8. Up to the issuance of this Order, Minga has not paid the administrative penalty imposed in the Final Order and, thus, is in violation of said Final Order.
9. Minga is also in violation of the Final Order because he continued to sell promissory notes subsequent to the issuance of the Final Order in the State of Mississippi while neither he, nor the promissory notes were registered with the Division, nor exempted therefrom. Because Minga had knowledge of the Division's Final Order, his violations of the provisions therein were willful.
10. Beulah L. Tucker is a lifetime resident of Smithville, Mississippi. Minga was Mrs. Tucker's insurance agent from whom she and her late husband had purchased the latter's life insurance policy.
11. In June of 2001—three (3) years to the month subsequent to the issuance of the Final Order—Minga approached Mrs. Tucker in Smithville, Mississippi, indicating to her that he had an investment opportunity in promissory notes through McCarn's Allstate Finance. Minga explained that the notes were for a nine (9) month period and offered a rate of return of nine percent (9%) with the option to repurchase the promissory note at the end of the nine (9) month term. Minga assured Mrs. Tucker that the promissory notes were insured, and that he had personally invested One Hundred Thousand Dollars (\$100,000.00) of his own money in these notes. Minga additionally stated that there was no way that Mrs. Tucker could lose her money in this investment and that she could get her money back anytime she wanted it.

12. On June 8, 2001, persuaded by Minga's sales pitch, Mrs. Tucker purchased a McCarn's Promissory Note from Minga in the amount of Twenty-Five Thousand Dollars (\$25,000.00). On June 26, 2001, Mrs. Tucker purchased a second McCarn's Promissory Note from Minga in the amount of Twenty Thousand Dollars (\$20,000.00).
13. In December of 2002, Mrs. Tucker received a bankruptcy notice from McCarn's Allstate Finance. Thereafter, Minga continued to reassure Mrs. Tucker that she would get all of her money back and then eventually Minga no longer would accept Mrs. Tucker's telephone calls. Mrs. Tucker's affidavit detailing the events in paragraphs 10 through 13 herein is affixed hereto as Exhibit "G."

III. Applicable Statutory Provisions

The previous paragraphs are incorporated herein by reference.

14. With respect to the offer and sale of the Securities, §75-71-401 of the Act states:
- ...it is unlawful for any person to offer or sell a security in the State of Mississippi unless (1) it is registered under this chapter or (2) the security or transaction is exempted under article 3 of this chapter.
15. §75-71-105(h) of the Act states:
- "Person" means an individual, (or) a corporation...
16. §75-71-105(k) of the Act states:
- "Security" means any **note**; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement...(emphasis added)
17. §75-71-119 of the Act states:

(a)...[Section] 75-71-401...appl[ies] to persons who sell or offer to sell when

(1) an offer to sell is made in this state...

(c)...an offer to sell or to buy is made in this state whether or not either party is then present in this state when the offer (1) originates from this state or (2) is directed by the offeror to this state...

18. §75-71-301 of the Act states:

...it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

19. §75-71-501 of the Act states:

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly,

(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

IV. Conclusions of Law

The previous paragraphs are incorporated herein by reference.

20. The Secretary of State has jurisdiction over this matter pursuant to Miss. Code Ann. §75-71-107(a).

21. The promissory notes offered and sold by the Respondent are securities as that term is defined in Miss. Code Ann. §75-71-105(k).

Respondent violated Miss. Code Ann. §75-71-301 by transacting business as a broker-dealer or agent in Mississippi without registering as such.

22. Respondent violated Miss. Code Ann. §75-71-401 by offering and selling unregistered securities within the State of Mississippi.

23. Respondent violated Miss. Code Ann §75-71-501 by making both untrue statements of material fact and omitting to state material facts necessary, in light of the circumstances which they are made, not misleading in connection with the offer, sale, or purchase of any security, directly or indirectly. In addition, Respondent violated the same provision by engaging in an act, practice or course of business which operated as a fraud or deceit upon a person in connection with the offer, sale, or purchase of any security, directly or indirectly.

V. Administrative Penalty

NOTICE is hereby given that the Secretary of State intends to impose an administrative penalty of up to Twenty-five Thousand Dollars (\$25,000) for each offense and each violation shall be considered a separate offense plus all costs and expenses of the Division in the investigation of the violations and in the institution of administrative proceedings against the Respondent, pursuant to the authority set out in §75-71-715(2) of the Act. The Secretary of State reserves the right to seek any or all of the remedies enumerated in §75-71-715 of the Act.

VI. Public Interest


This Summary Cease and Desist Order and Notice of Intent to Impose Administrative Penalty is issued in the public interest and for the protection of investors consistent with the purpose of the Act.

present testimony, evidence and argument relating to the matters contained herein. Upon request, subpoenas may be issued for the attendance of witnesses and for the production of books and papers on the Respondents' behalf at the hearing relating to the matters contained herein. In the event such written notice is not received within said thirty (30) day period of time, a FINAL CEASE AND DESIST ORDER AND ORDER IMPOSING ADMINISTRATIVE PENALTY may be entered in this proceeding with no further notice.

ISSUED, this the 25 day of November 2003.

ERIC CLARK
Secretary of State

BY:


JAMES G. NELSON, II
Assistant Secretary of State
Business Regulation and Enforcement

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